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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/527,680	03/17/2000	Rolf Jess Jorgensen	56672.000003	2845
1444	7590	03/01/2004	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C.			LEVY, NEIL S	
624 NINTH STREET, NW				
SUITE 300			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20001-5303			1616	

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/527680		JORGENSEN	

EXAMINER	
Lemy	

ART UNIT	PAPER NUMBER
1616	2127104

DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

Responsive to communication(s) filed on 1/27/04

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 12, 5-7, 10-14, 18-20, 25-31 & 35 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 14, 18, 19, 25, 28-31 & 35 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims 12, 5-7, 10-14, 18-20, 25-31 & 35 are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- Notice of Reference Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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**The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Applicant should include reference to priority at page 1, after title.

Claims 1, 2, 5-7, 10-13, 20, 26 and 27 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 11.

**Claims 14, 18, 19, 25, 28, 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Huzinec et al 5912030.**

The rejection of record is maintained, because applicants encapsulation is not identified as any different from Huzinec, since the only ingredients as encapsulants of applicants are those of Huzinec (col.5, lines 47-62) and the claimed "Membrane" has no size-thickness limitations.

**Claims 14, 15, 18, 25, 28-30 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Ashmead et al 3184381.**

The rejection of record is maintained, another compound which reduces Ca absorption by binding Na tripolyphosphate (col.2, lines 43, 44).

Ashmead encapsulates the actives; applicant although stating encapsulation, provider only one statement, no enablement, and no utilization, of any encapsulated forms of actives. Thus, the protected by mixing compositions of Ashmead are at least encapsulated in the preparation, : in contrast to applicants examples.

Applicant's arguments filed 9/11/03 have been fully considered but they are not persuasive. Applicants arguments were addressed above-we find only Zinc oxide and Zeolite tested, and no encapsulated forms, but the compositions are still seen as met by the prior art, since applicants' use of "encapsulation" is not explicitly presented, nor, given example 4, does it seem to be critical.

Applicant's comments were considered , as were the amendments, as indicating the claimed invention to be other

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than what was understood by examiner; the specification was not seen as supporting the amendments & as the argued for invention ; however, within the range of interpretation of encapsulation we find the prior art, so the rejection of enablement will not be sustained.

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on \*\*\*t-f from 7-5:30..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on 571-272-0602\*\*\*. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL S. LEVY  
PRIMARY EXAMINER